IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2007

CORAM

THE HONOURABLE MR. JUSTICE P.JYOTHIMANI

Appeal Suit No. 387 of 1993

1.M.M.Shanmugasundaram
2.Kasthuri
3.Samundeeswari
4.Bhavani . . Appellants/Plaintiffs

Versus

1.Balasubramanian
2.Chandrasekaran
3.Sakunthala . . Respondents/Defendants

Prayer: This appeal suit is preferred under section 96 CPC r/w or 41 R1 against the decree and judgment dated 24.01.1992 and made in O.S.No.151 of 1986 on the file of the Subordinate Judge, Poonamallee.

For Appellants :Mr.N.Kirubakaran

For Respondents :Mr.R.Subramaniam for
Mr.N.S.Sivakumar for R1 & R2
Mr.A.Palaniappan for R3

JUDGMENT

The plaintiffs in the trial court are the appellants and they have filed a suit in O.S.No.151 of 1986 for declaration of their title in respect of B schedule property which is the southern moity of 'A' Schedule, Ramanujamkoodam Street, Ponnamallee Village bounded on the North Shanmugasundaram house and west by street, with linear measurements of 19' Northsouth and 200' Eastwest, comprised in Survey No.115/74. The A schedule property measuring 38' Northsouth and 200' Eastwest. The said suit is also filed for delivery of possession of B schedule property and for the past mesne profits apart from the claim of future mesne profit.

2.The admitted fact is that the suit property originally belonged to Masilamani mudaliar whose first wife was Meenakshiammal through whom was born the only daughter namely Visalakshi ammal @

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Saraswathi who died in the year 1965 and her two sons namely Sabapathy and Murugesan also died in the year 1975 and 1972 respectively and the plaintiffs are the legal heirs of the said Murugesan.

3.It is also admitted that after the death of first wife namely Meenakshi ammal, Masilamani Mudaliar married Saraswathi ammal as his younger wife who died on 08.08.1975. Visalakshi ammal @ Saraswathi became the absolute owner and therefore the plaintiffs who claim under Visalaksh ammal @ Saraswathi are entitled for declaration.

4.According to the plaintiffs the defendants who are sister's, sons and daughter of the second wife of Masilamani Mudaliar namely Saraswathi ammal are not entitled to be in possession of the suit property and therefore, the plaintiffs being the successors of Visalakshi ammal alias Saraswathi who is the remainder holder of the property after the life time of the second wife of Masilamani Mudaliar namely Saraswathi ammal are entitled for declaration and possession.

5.On the other hand, it was the defendants case that the said Saraswathi ammal younger wife of Masilamani Mudaliar was the absolute owner of the B Schedule property and as absolute owner she has also sold the northern ½ of the property to one Jayaram Mudaliar. That apart, it is the case of the defendants that the Will executed by Masilamani Mudaliar on 29.10.1938 was not properly administered by the executors. The second wife namely Saraswathi ammal has become absolute owner of the suit property having enjoyed the same for 60 years without interruption and without any claim from Visalakshi ammal alias Saraswathi.

6.It is the further case of the defendants that Visalakshi ammal @ Saraswathi died in the year 1965 before Saraswathi ammal the second wife of the Masilamani ammal. Therefore, there cannot be any right to Visalakshi ammal @ alias Saraswathi in respect of the suit property.

7.According to the defendants since one of the sons of Visalakshi ammal alias Saraswathi namely Murugesan himself died even before the death of the second wife of Masilamani mudaliar namely Saraswathi ammal and therefore the plaintiffs cannot have any right.

8.The defendants claimed right under the will executed by the second wife of Masilamani mudaliar namely, Saraswathi ammal dated 27.07.1975 marked as Ex.B1 under which the first defendant claimed to be the person entitled to the property.

9.The trial Court has framed the following issues;

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1.Whether the name of the first defendant has been wrongly given?

2.Whether Visalakshi ammal alias Saraswathi ammal died before the Saraswathi ammal and if so whether the plaintiffs are entitled to claim right over the suit property?

3.Under the Hindu Succession Act, 1956 (hereinafter referred as the Act) after the death of Masilamani mudaliar, whether his younger wife Saraswathi ammal has become absolute owner of the suit property?

4.Whether the first defendant is entitled to the suit property based on the will of Saraswathi ammal?

5.Whether the plaintiff is entitled for past mesne profits of Rs.7,700/- and Rs.200/- for future mesne profit every month?

6.Whether the plaintiff is entitled for declaration as prayed for?

7.Whether there is any cause of action for the suit?

8.What other reliefs, the parties are entitled?

10.Since, subsequently, there was an amendment to the plaint the first issue has not arised for consideration. While considering the other issues 2 to 4 and 6, the trial Court having come to the conclusion that the second wife of Masilamani mudaliar namely Saraswathi ammal was placed in possession of the suit property by virtue of his will dated 29.10.1938 and after the Hindu Succession Act, 1956 has come into effect, she being in possession has become entitled absolutely to the property as per Section 14(1) of the Act and holding that the daughter of Masilamani mudaliar born through his first wife Meenakshi ammal namely Visalakshi ammal alias Saraswathi has pre-deceased his second wife in the year 1965 has held that the said Saraswathi ammal who died only on 08.08.1975 has become absolute owner of the property and therefore her bequeathing under the will dated 27.07.1975 to the first defendant is valid in law and in view of the same dismissed the suit.

11.It was as against the said dismissal, the plaintiffs have filed the present first appeal. Considering the above said facts and

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circumstances of the case, especially in the circumstances that it is admitted that the suit property belonged absolutely to Masilamani mudaliar and the will executed by Masilamani mudaliar on 29.10.1938 and pursuant to the said Will his second wife namely Saraswathi ammal was put in possession of the suit property and the said Saraswathi ammal died on 8.8.1975 and considering that the Visalakshi ammal alias Saraswathi had two sons namely Sabapathy and Murugesan who also died in the year 1975 and 1972 respectively and the plaintiffs are claiming right over the property as legal heirs of the Murugesan on the basis of the Will executed by Masilamani mudaliar dated 29.10.1938 (Ex.A1) under which the second wife of Masilamani mudaliar namely Saraswathi ammal was given life interest to enjoy the property during her life time and therefore it is her limited interest over the property and after her death on 08.08.1975, as per the plaintiffs, the property is reverted back to Masilamani mudaliar's daughter Visalakshi ammal @ Saraswathi and her legal heirs and in such position, the following points arise for determination in the first appeal;

> (i)Whether possession given to Saraswathi ammal under the Will of Masilamani mudaliar dated 29.10.1938 marked as Ex.A1, has enlarged in to an absolute right to her by virtue of Section 14(1) of the Act;
>
> (ii)Whether as per contents of the said Will dated 29.10.1938 wherein Saraswathi ammal was given life interest and thereafter the absolute right to the daughter of Masilamani mudaliar born through his first wife Meenakshi ammal namely Visalakshi ammal @ Saraswathi and therefore the condition given under the Will is a restriction on the right of Meenakshi ammal as per Section 14(2) of the Act so as to enable the plaintiffs to claim right under the vested remainder holder namely Visalakshi ammal @ Saraswathi?

12.Before deciding the points for consideration, it is necessary to refer to the contention of Mr.N.Kirubakaran, the learned counsel appearing for the appellants. While admitting the facts in respect of this case as not of much dispute, he would submit that inasmuch as the right of Saraswathi ammal itself is under the Will executed by her husband Masilamani mudaliar dated 29.10.1938 marked as Ex.A1, the contents of the said Will is binding upon her which imposes restrictions on her right of absolute ownership over the property, since it only confers life estate on her and after her life time absolute right given to the daughter of Masilamani mudaliar namely Visalakshi ammal @ Saraswathi or her legal heirs. The learned counsel for the appellants also submit that

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the will executed by Masilamani dated 29.10.1938 which contains many items of properties in which the suit property is referred to as item number 25. In the said Will Masilamani mudaliar has specifically stated in para 7 that "in respect of item 25('schedule property') and item Nos.21 and 22 my younger wife Saraswathi ammal shall enjoy the suit properties absolutely subject to the condition namely in respect of item No.25 house (suit property) which is in two parts, Southern Part (B schedule property which is the subject matter of dispute) shall be given to my eldest daughter or her legal heirs after her (Sarawathi ammal) life time."

13.Therefore, according to the learned counsel for the appellants, the condition by which the Will has been given in favour of Saraswathi ammal is one of restriction and it is only subject to that condition she was placed in possession of the suit property and therefore it is a case which has to be covered under Section 14(2) of the Act and cannot be construed as one under Section 14(1) of the Act.

14.The learned counsel for the appellant further submitted, inasmuch as Ex.A1 Will is clear that absolute vested remainder right was given not only to the daughter of Meenakshi ammal namely Visalakshi ammal @ Saraswathi but also to her legal heirs and therefore the plaintiffs who are claiming under her are entitled to have the absolute right, having stepped into the shoes of Visalakshi ammal @ Saraswathi. He would further contend that it is not as if the said Saraswathi ammal was put in possession pursuant to her maintenance right or in her pre-existing right. In this regard he would also submit that Ex.A1 Will itself contained various items of properties and infact the testator Masilamani mudaliar has given absolute right in respect of various right to Saraswathi ammal and therefore it cannot be construed that as far as the suit property is concerned she was to be in possession on the basis of her pre-existing right or maintenance right etc., and her possession was only to the restricted to life estate as per the Will.

15.The learned counsel for the appellant would submit that it is not even the case of the defendants in the written statement that the said Saraswathi ammal was put in possession of the suit property pursuant to the Will dated 29.10.1938 based on the maintenance right.

16.The learned counsel for the appellant also relied upon the Judgment of the Honourable Supreme Court reported in GULABRAO BALWANTRAO SHINDE v. CHHABUBAI BALWANTRAO SHINDE (AIR 2003 SCC 160) to show that in the absence of pleadings that said property was given to her by way of maintenance, mere possession would not enlarge into full ownership right by invoking Section 14 of the Act.

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17.The learned counsel appearing for the appellants also bring to the notice of this Court to the evidence of the first defendant DW1 during cross-examination wherein he has admitted that Saraswathi ammal has already sold the northern portion of the A schedule property and therefore the question of putting her in possession in respect of southern portion for maintenance does not arise. Therefore, the possession of the property by Saraswathi ammal cannot be treated as her pre existing right. The learned counsel for the appellants also relied upon another judgment of the Honoruable Supreme Court reported in BHURA V. KASHI RAM (1994 2 SCC 111) which was relating to the possession of a daughter under the Will to contend that once life interest is given under the Will, no more meaning can be given to the same and therefore it can never be presumed to be enlarged as absolute estate and the same has to be conferred under Section 14(2) of the Act.

18.The learned counsel for the appellants also placed reliance on the Judgment of the Honourable Supreme Court reported in MST.KARMI VS. AMRU & ORS. (AIR 1971 SC 745) and contended that the life estate given to Saraswathi ammal can never be enlarged as absolute estate under the Hindu Succession Act.

19.On the other hand, Mr.R.Subramanian, learned counsel appearing for the respondents would submit that on fact it was the specific case of the defendants in the written statement that Sarawathi ammal who was put in possession of the suit property pursuant to the Will become entitled to the suit property after passing of the Hindu Succession Act, 1956 and also she continued to be in possession till her death in the year 1975.

20.The learned counsel for the respondents further submitted that the trial Court in fact has framed issues about the right of Saraswathi ammal under the Will of Masilamani mudaliar dated 29.10.1938, after passing of the Hindu Succession Act, 1956 and came to a definite conclusion that the possession of Sarawathi ammal was based on her pre existing right which has been confirmed in the Will and therefore the same has correctly found by the trial Court that her right has enlarged under Section 14(1) of the Act as absolute right.

21.The learned counsel for the respondents also submitted that admittedly Saraswathi ammal happened to be the wife of Masilamani mudaliar who married her after the death of his first wife Meenakshi ammal, it goes without saying that as his wife she is entitled for maintenance which is a pre-existing right available to her. According to the learned counsel, even if it is not only on the basis of maintenance, the right under Section 14(1) of the Act is available to her since even before the Act came in the force she was

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placed in possession. For this he has relied upon the Judgment of the Honourable Supreme Court reported in V.TULASAMMA v. V.SESHA REDDI (AIR 1977 SCC 1994) wherein the Honourable Supreme Court has held that actual physical possession is not necessary and possession can be constructive in nature also.

22.The learned counsel for the respondents also relied upon various other judgments reported in SRI MAHALIAMMAN TEMPLE v. VIJAYAMMAL (1983 2 MLJ 442), THOTA SESHARATNAMMA AND ANOTHER v. THOTA MANIKVAMMA (DEAD) BY LRs & OTHERS (1992 1LW 601 SC) and K.RAMASWAMI GOUNDER ETC. v. ADIKESAVA GOUNDER & ORS (1995 2 LW 810) to show that there is no necessity to say about the pre-existing right.

23.The learned counsel would further submit that as far as the judgment relied upon by the learned counsel for the appellants reported in BHURA V. KASHI RAM (1994 2 SCC 111) it relates to daughter's right but even in respect of the said right subsequently the Supreme Court in BALWANT KAUR v. CHANAN SINGH (AIR 2000 SCC 1908) by relying upon the Hindu Succession Act has held that even the daughter has right of maintenance which is pre-existing right. The learned counsel for the respondents also submitted that in all these cases wherein pre-existing right is available are not necessarily in respect of maintenance. When once a Hindu female is put in possession of the property before the Act come in to effect her right enlarge into an absolute right as per Section 14(1) of the Act. The limited right under Section 14(2) of the Act by way of restriction arise only in cases where after coming into force of the Act and the grant received by the female Hindu for the first time. The learned counsel for the respondents also relied the latest judgment of the Honourable Supreme Court reported in SADHU SINGH v. GURDWARA SAHIB NARIKE (2006(4) CTC 773)to substantiate his contention.

24.Apart from the admitted fact which I have narrated above, it is true that a reference to Will Ex.A1 dated 29.10.1938 had contained various properties apart from the suit property and in respect of some other properties absolute right was given to his second wife Saraswathi ammal and it is also admitted that she has in fact sold some of the said properties also. It is also true as per the reading of the Ex.A1 Will that Saraswathi ammal was not placed in possession in respect of the suit property in lieu of her right of maintenance but the first defendant who was examined as DW1 has categorically admitted in his cross-examination as follows;

"மாசிலாமணி முதலியார் இறந்த நேரத்தில் அவருக்கு பயிர் செய்யும் நிலம் சுமார் 10 ஏக்கர் இருந்தது. அந்த 10 ஏக்கரில் சா.ஆ.1ன் கீழ் சரஸ்வதியம்மாளுக்கு மாசிலாமணி

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முதலியார் 2 ஏக்கர் நிலம் கொடுத்திருக்கிறார். சர்வ சுதந்திரமாக சரஸ்வதி யம்மாள் மேற்படி நிலத்தை அனுபவிக்கலாம் என்று சா.ஆ.1ன்படி நிலம் கொடுத்ததால் சரஸ்வதியம்மாள் அந்த நிலத்தை பின்னிட்டு விற்றுவிட்டார், மாசிலாமணி முதலியாருக்கு ராமாஜக்கூடத் தெருவில் தாவா வீட்டைத் தவிர வேறு வீடுகள் இல்லை. பிள்ளையார் கோவில் தெருவில் மாசிலாமணி முதலியாருக்கு ஒரு வீடு இருந்தது, அந்த வீட்டை பின்னிட்டு சரஸ்வதியம்மாள் தான் விற்றுவிட்டார். தாவா சொத்தில் வடக்குப் பக்க பகுதியையும் சரஸ்வதியம்மாள் தான் விற்றுவிட்டார். "

In any event it is not in dispute that Saraswathi ammal was the second wife of Masilamani mudaliar who married her after the death of his first wife namely Meenakshi ammal whose daughter was Visalakshi ammal alias Saraswathi under whom the plaintiffs claim.

25.It is also in admission that the said Visalakshi ammal @ Saraswathi died in the year 1965 before the death of the second wife of Masilamani mudalilar namely Saraswathi ammal who died on 08.08.1975. So, at the time when the said Masilamani mudaliar executed the Will Ex.A1 dated 29.10.1938, the said Saraswathi ammal was put in possession pursuant to the terms of the Will and in the meantime when she was in possession the Hindu Succession Act, 1956 came into existence and even thereafter till her life time in the year 1975 she was in possession of the suit property. Therefore, it cannot be said as if she had no right over the property either on the date of execution of the Will by Masilamani Mudaliar or immediately after his death since she happens to be the wife of the said Masilamani Mudaliar and therefore it is not necessary that for the purpose of maintenance she has to be in possession of the suit property. Her possession in the suit property is necessarily for her maintenance, apart from her right as the wife of the deceased Masilamani mudaliar since he is not a stranger. Therefore, it cannot be said as if she had no right at all at the time when she was put in possession of the suit property before the Hindu Succession Act came into existence. After the Act has come in to existence Section 14(1) of the said Act confers full ownership to such a female Hindu who has acquired the right over the property as its full owner. In fact the explanation clause to Section 14(1) of the Act says that "the acquisition of right by a female Hindu means such acquisition may be either by inheritance or by devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift from any person, whether a relative or not, before, at or after her marriage or by her own skill or exertion or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this

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Act". Further, it is time and again explained by the Honourable Apex Court that there is absolutely no difficulty to come to the conclusion that the possession given to a female Hindu before the Act has come into existence or even after the act came into existence can be under any one of these categories and not necessarily in lieu of maintenance. Therefore, even before the Act has come in to existence there was no restriction given to such right of acquisition to the female Hindu to be in possession and the purport of the Act was to give absolute right which was given in a restrictive manner of maintenance under the Vedic and Sastric principles of Hindu Law. As far as the restrictive right under 14(2) of the Act is concerned as rightly pointed out by the learned counsel for the respondents, the Honourable Apex Court and this Court on many occasion has held that such restrictions will arise in cases where a female Hindu gets the grants for the first time after the Act has come into effect and not based on pre-existing right. Section 14 of the Hindu Succession Act states as follows;

> 14.Property of a female Hindu to be her absolute property;
>
> (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> (2)Nothing contained in sub-section(1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or other instrument or the decree, order or ward prescribe a restricted estate in such property.

26.Undoubtedly the right of a Hindu woman in the property as per Sections 14(1) and (2) of the Hindu Succession Act, 1956 was dealt with extensively by the judgment of the Honourable Apex Court in one of the earliest judgment rendered in v.TULASAMMA V. SESHA REDDI (AIR 1977 SCC 1944). It was in that case, the basic principles enunciated under the Hindu Succession Act, in contrast to the Vedic and Sastric Principles have been explained in detail as guidelines for posterity. The Honourable Supreme Court has held that prior to the enactment of Section 14, the Hindu female's right was restricted under the Sastric Hindu law and that was made absolute estate under the Act. In fact the Supreme Court has even held that there is no necessity for the actual physical possession of a Hindu female before the Act came into existence and even a constructive possession by way of a right and by virtue of that the woman was entitled or capable of obtaining possession of the property itself was sufficient to have the absolute right under Section 14(1) of the

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Act. While considering the distinction between Sections 14(1) and (2) of the Act, the Honourable Supreme Court has held that Section 14(2) is merely in the nature of proviso or exception to Section 14 (1) of the Act and the same has to be construed on the broad sweep of Section 14(1) of the Act by saying that construing it otherwise would amount to making mockery of Section 14(1) of the Act and held that Section 14(2) can be made applicable only in respect of properties acquired by the Hindu female for the first time as a grant without any pre-existing right under the gift Will etc., While analysing the historical illustration in this regard the Honourable Supreme Court has held categorically in the Judgment reported in V.TULASAMMA v. V.SESHA REDDI (1977 SCC 1944) at page number 1948 as follows;

> 4. ". . .
>
> Sub-section (2) must therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by female Hindu for the first time as a grant without any pre-existing right, under a gift, Will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. This constructional approach finds support in the decision in Badri Prasad's case (supra) where this Court observed that sub-section (2) "can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property". It may also be noted that when the Hindu Succession Bill 1954, which ultimately culminated into the Act, was referred to a Joint Committee of the Rajya Sabha, Cl.18(2) of the Draft Bill, corresponding to the present sub-section (2) of Section 14, referred only to acquisition of property by a Hindu female under gift or will and it was subsequently that the other modes of acquisition were added so as to include acquisition of property under an instrument, decree, order or award. This circumstance would also seem to indicate that the legislative intendment was that sub-section(2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right – a kind of acquisition akin to one under gift or will. Where, however property is acquired by a Hindu

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female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section(2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property".

27.It is relevant to point out that in the said judgment, the Honourable Supreme Court has held that even under the pre-existing Sastric law, the right of maintenance of the wife was undoubtedly a pre-existing right. In para 27, the Honourable Supreme Court has held as follows;

> 27.Thus on a careful consideration and detailed analysis of the authorities mentioned above and the Shastric Hindu Law on the subject, the following propositions emerge with respect to the incidence and characteristics of a Hindu Woman's right to maintenance;
>
> (1)that a Hindu Woman's right to maintenance is a personal obligation so far as the husband is concerned and it is his duty to maintain her even if he has no property. If the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow;
>
> (2)though the widow's right to maintenance is not a right to property but it is undoubtedly a pre-existing right in property, i.e. it is a jus and rem not jus in rem and it can be enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the Civil Court;
>
> (3)that the right of maintenance is a matter of moment and is of such importance that even if the joint property is sold and the purchaser has notice of the widow's right to maintenance, the purchaser is legally bound to provide for her maintenance;
>
> (4) that the right to maintenance is undoubtedly a pre-existing right which existed in the Hindu law long before the passing of the Act of 1937 or the Act of 1946, and is therefore, a pre-existing right;
>
> (5)that the right to maintenance flows from the social and temporal relationship between the

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husband and the wife by virtue which the wife becomes a sort of co-owner in the property of her husband, though her coownership is of a subordinate nature; and

(6)that where a Hindu widow is in possession of the property of her husband, she is entitled to retain the possession in lieu of her maintenance unless the person who succeeds to property or purchases the same is in a position to make due arrangements for her maintenance.

Therefore as a necessary corollary after advent of Section 14(1), the pre existing right has matured in to an absolute right. Therefore, it is not even necessary to explicitly state that the Hindu widow was placed in possession based on her maintenance right. Her possession itself pre-supposes her pre existing right. In the present case, inasmuch as, the possession of Saraswathi ammal has never been disputed which was pursuant to Will and admittedly she has lived during her life time up to 1975 and even after the advent of Section 14(1) of the Act and therefore there is absolutely no difficulty to come to the conclusion that her possession was based on her pre existing right.

28.The above decision was followed by a Division Bench of this Court in SRI MAHALIAMMAN TEMPLE v. VIJAYAMMAL (1983 2 MLJ 442) wherein in para 5 this Court has held as follows;

"5. A number of cases have considered the scope and ambit of Section 14(1) of the Hindu Succession Act with reference to the provisions of Section 14(2). But suffice it to refer to the decision of the Supreme Court in V.TULASAMMA v. SESHA REDDI. In that decision, Bhagwati,J., for himself and on behalf of A.C.Gupta,J., held as follows:-

"Sub-section (2) must therefore be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property."

Therefore, unless the testamentary disposition is to a person who had no pre-existing right in the

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property, the dispostion itself will come within the provision of Section 14(1) so that the life estate will get itself enlarged into an absolute estate and the revertion will come to an end."

This was again reiterated with the seal of approval by the Supreme Court in the judgment reported in RAMASWAMI GOUNDER ETC., v. ADIKESAVA GOUNDER & OTHERS (1995(2)LW 810)in para 5 the Honourable Supreme Court has held as follows;

"5.Much water has flowed since the High Court delivered its judgment in 1971. This Court has delivered a string of judgments dealing with Section 14 of the Act. All these judgments have been summarised in the concurring judgments of two learned Judges in Thota seshrathamma and another v. Thota Manikyamma (dead) by L.R.s and others, (1991) 4 SCC 312 = 1992-1-L.W. 601. Put concisely, it has been held that Section 14(2) of the Act is in the nature of proviso or an exception and it comes into operation only if acquisition by any of the methods set out in the Explanation to Section 14(1) is made for the first time without there being any pre-existing right in the Hindu Woman. If her case fell under the provisions of Section 14(1), the Hindu woman became the full owner of the property. The concept of a Hindu widow's estate was not relevant. It was enough if the Hindu woman had even a vestige of title to the property and she had acquired it by virtue of a pre-existing right. That the limited right had been conferred upon her by a document did not attract the provisions of Section 14(1) if the Hindu woman had a pre-existing right to maintenance. The document only recognised and gave effect to the pre-existing right to maintenance. The document did not have to state that the limited estate was being conferred upon her in lieu of her pre-existing right."

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29.The Supreme Court Judgment referred to, by the learned counsel for the appellant, in BHURA v. KASHI RAM (1994 2 SCC 111)in respect of the widowed daughter stating that the same could be only on the basis that she has no pre-existing right in the property was considered in the latest judgment of the Supreme Court, in SADHU SINGH v. GURDWARA SAHIB NARIKE (2006(4) CTC 773). In that case various judgments on this issue were analysed by the Apex Court ultimately holding that where a female Hindu possessed the property

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on the date of the Act in which she had a pre-existing right though limited and in such circumstances Section 14(1) had operation to convert her limited estate into an absolute one and Section 14(2) could not be relied on for taking the case out of Section 14(1) of the Act on the basis that the property was put in her possession on the basis of a compromise thereby continuing the legal stand of the Apex Court referring the V.TULASAMMA's case stating that such grant if it was obtained for the first time by the female that restriction will have operation under Section 14(2) of the Act. The relevant passage of the Honourable Apex Court is as follows;-

> "11.On the wording of the Section and in the context of these decisions, it is clear that the ratio in V.TULASAMMA v. v.SHESHA REDDI, (1977 (3) SCR 261) has application only when a female Hindu is possessed of the property on the date of the Act under sembalance of a right, whether it be a limited or a pre-existing right to maintenance in lieu cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in RAGHUBAR SINGH v. GULAB SINGH (AIR 1998 SC 2401) wherein the testamentary succession was before the Act. The widow had obtained possession under a Will. A suit was filed challenging the Will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the property on the date of the Act under the Will as of right and since the compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In MST.KARMI v. AMRU & ORS.,(AIR 1971 SC 745), the owner of the property executed a Will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession of the property on the date of the Act, this Court held that the life estate given to her under the Will cannot become an absolute estate under the provisions of the Act. This can only be on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the

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property as on the date of the coming into force of the Act, the same being bequeathed to her by her father under a Will, this Court in BHURA & ORS. v. KASHI RAM (1994 (2) SCC 111), after finding on a construction of the Will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This again could only be on the basis that she had no pre-existing right in the property. In SHARAD SUBRAMANYAN v. SOUMI MAZUMDAR & ORS., (JT 2006(11) SC 535), this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the Will and Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in Tulasamma. Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-section(1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14 (2) of the Act."

30.The Supreme Court in that case was pleased to refer to the wordings in Mayne on Hindu Law, 15th Edn., page 1171, it is stated;

"on a reading of sub-section (1) with Explanation, it is clear that wherever the property was possessed by a female Hindu as a limited estate, it would become on and from the

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date of commencement of the Act her absolute property. However, if she acquires property after the Act with a restricted estate, sub-section(2) applies. Such acquisition may be under the terms of a gift, will or other instrument or a decree or order or award."

In fact while considering the right of a widowed daughter in the father's property which was an issue in 1994 (2) SCC 111 (BHURA v. KASHI RAM) as stated above, in light of the proviso of Section 14(1) of the Hindu Succession Act, 1956, the Supreme Court has held that apart from her right in her husband's property if she was unable to maintain herself she was held to be entitled to the estate of her father during his life time and after his life time it will certainly fall under Section 14(1) of the Act. That was the judgment rendered by the Honourable Apex Court in BALWANT KARU V. CHANAN SINGH (2000 3 CTC 444) the operative portion of the judgment is as follows:

"19.Under the provision to Section 19(1) (Hindu Adoption and Maintenance Act,1956) the words used are "(a) from the estate of her husband or her father or mother" and they mean that she has a right-apart from the right she has against the estate of her husband a personal right against her father or mother during their respective lives. The words 'the estate of before the words 'her husband' are not to be read into the latter part of the clause as 'estate of her father or mother.' What the proviso does here is to create (i) a right against the estate of her husband and also (ii) an independent and personal right against the father during his lifetime (or against the mother) if the daughter is unable to maintain herself out of her earnings or other property etc. That right against the father during his lifetime can be enforced against the property he is holding. The legislature has deliberately not used the words 'estate of her father' in the proviso (a) to Section 19(1). That right of the widowed daughter is covered under Section 21(vi) read with Section 22(2). We have already referred to that right of maintenance against the estate of her father in Section 22(2) read with Section 21(vi). If indeed we read the words 'estate of before the word 'father' in Section 19(1)(a) then Section 22(2) read with Section 21 (vi) would become otiose. That is why we say that the Proviso (a) to Section 19(1) creates a personal right in favour of the widowed daughter

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against her father during his lifetime. Any property given in lieu thereof, during his lifetime or to go to her after the father's life time would certainly fall under Section 14(1) of the Hindu Succession Act, 1956 that being in lieu of a pre-existing right during the father's lifetime."

31.Therefore, the plethora of the above judgments of the Honourable Apex Court as it was followed by the Division Bench of this Court as I have stated earlier has undoubtedly established the absolute right of a Hindu woman as per the law that the right of a female Hindu under Section 14(1) of the Act on the property acquired before or after commencing of the Act under the pre-existing right either by way of inheritance, gifts or partition and in view of maintenance or arrears of maintenance or gift from any person is certainly covered under Section 14(1) of the Act and I have no hesitation to come to the conclusion that based on hierarchy of judgments stated above, the possession of a wife is certainly the pre-existing right, even if it is not mentioned in so many wordings and that right matures into an absolute right after the Act has come into effect. Applying the above said principle, and also on the admitted facts and circumstances of the case as I have enumerated above, there is no doubt that the said Saraswathi ammal wife of Masilamani mudaliar who was put in possession pursuant to the Will dated 29.10.1938 under Ex.A1 and continued to be in possession when the 14(1) of the Hindu Succession Act, 1956 came into existence and even thereafter continued to be in possession till her life time upto 1975 and therefore her right has become absolute right by advent of Section 14(1) of the Act and in view of the same her bequeathing in favour of the first defendant under the Will dated 27.07.1975 marked as Ex.B1 is certainly enforceable in law and consequently the plaintiffs cannot have any right over the property. In view of the said factual and legal positions, the above said points are answered in favour of the defendants/respondents and consequently appeal fails and the same is dismissed. No costs.

jikr

Sd/
Asst.Registrar

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To

1. The Subordinate Judge, Poonamallee,

2. The Section Officer, VR Section, High Court, Madras.

+ 1 cc to Mr. N. S. Sivakumar, Advocate SR No. 23254

Judgment in

Appeal Suit No.387 of 1993

BV(CO)
SR/19.4.2007

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